# ORISSA HIGH COURT
# CUTTACK

**CRLREV NO. 870 OF 2007**

From the order dated 17.05.2007 passed by the S.D.J.M., Bhubaneswar in I.C.C. No.2855 of 2005.

Sri Brajaraj Das alias Dr. Braja Bhai ..... Petitioner

Versus

Pyarimohan Mohapatra & others ..... Opp. parties

For petitioner : M/s A.K. Mohapatra(1)
& S.C. Rath.

For Opp. parties : M/s B.B. Mohanty,
A.C. Swain,
B.B. Mishra,
S. Dash and
D.P. Rayaguru.
(for O.P. No.1)

M/s B. Rath, J.N.Rath,
S.K. Jethy,
P.S. Samantara,
P.K. Behera and
S.K. Mishra.
(for Proforma O.P. No.3)

**PRESENT :**

**THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY**

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Date of judgment : .10.2007

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***PRADIP MOHANTY,J.*** Challenge in this revision is to the order dated 17.05.2007 passed by the S.D.J.M., Bhubaneswar in I.C.C. No.2855 of

2005 partly allowing the application under Section 311 Cr.P.C. by confining the further cross-examination to certain questionnaire, thereby disallowing the rest of the questionnaire.

2. Brief facts of the case are that opposite party no.1 (hereinafter referred to as "the opposite party") filed a complaint case against the petitioner and the proforma opposite parties in the court of the S.D.J.M., Bhubaneswar, which was registered as I.C.C. Case No.2855 of 2005. In the said case, the complainant examined himself and three others as witnesses. The petitioner filed a petition on 05.03.2007 to recall the complainant for further cross-examination, which was allowed subject to cost of Rs.2000/-. On 24.07.2007, the petitioner paid the cost to the complainant and filed a further petition to allow him to put some additional questions to the complainant. But the learned S.D.J.M. partly allowed the same with an observation that all the questions set out in the petition are not relevant except question no.6. Against that order, this revision has been preferred.

3. Mr. Mohapatra, learned counsel for the petitioner submitted that further cross-examination of the complainant on those questions, which have been disallowed by the learned Magistrate, is necessary for just and proper adjudication of the case and to find out the truth. He pointed out that no reason has been ascribed for disallowing the said questions. As such, the order passed by the S.D.J.M. is illegal and arbitrary and has caused prejudice to the accused-petitioner. He also submitted that the revision is maintainable since this Hon'ble Court has got ample power to revise the impugned order by exercising its jurisdiction under Section 482 Cr.P.C., which provides for correction of the mistakes committed by the lower courts. In this connection, he relied on the decisions in ***Zahira Habibullah Sheikh v. State of Gujarat***, AIR 2006 SC 1367; ***Madhu Limaya v. State of Maharashtra***, AIR 1978 SC 47; ***Kailash Verma v. Punjab State Civil Supplies Corporation***,(2005) 2 SCC 571; ***A.***

***Gangadhar v. K. Prasad***, (2005) I OLR 535; and ***Bhama Meher v. Kausalya Meher***, 62 (1986) CLT 226.

4. Mr. Mohanty, learned counsel appearing for the opposite party contended that this revision is not maintainable and has been filed in order to prolong the proceeding. He also contended that different petitions have been filed at different times with an intention of delaying the trial and obstructing the justice. He further contended that the impugned order was passed on the third application filed by the petitioner under Section 311 Cr.P.C. and the learned S.D.J.M. has allowed the same in part by permitting the petitioner to cross-examine in respect of a particular question. The learned S.D.J.M. has also assigned reason while passing the said order. The order passed by the trial court was accepted by the petitioner without protest and on different occasions this petitioner wanted to stall the proceeding by filing frivolous petitions, which should not be encouraged. In support of his contentions, he relied upon the decisions in ***Prakash Ch. Pradhan v. State of Orissa***, (2004) 2 OLR 553; and ***Kailash Sahu v. Basanta Kumari Dei***,1992 Crl. L. J. 1918.

5. Perused the certified copy of the impugned order dated 17.05.2006 and subsequent order-sheet of the court of S.D.J.M., Bhubaneswar passed in I.C.C. No.2855 of 2005 filed by the opposite party as well as the decisions cited by the parties. There is no quarrel with the proposition that this Court has got power under Section 482 Cr.P.C. to correct the mistakes committed by the courts below. It is the settled principle of law that the best available evidence should be brought before the Court. The intention of Section 300 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in brining the valuable evidence on record. But in the instant case, on 25.02.2007 the charge was framed under Sections 469/471/500/ 501/502/34 IPC against the accused persons. On 16.12.2006, the complainant was examined as P.W.1 and cross-examined in part. On 03.01.2007 the complainant was further cross-examined and discharged. On 17.01.2007, P.Ws.2 and 3

were examined, cross-examined and discharged. On 25.01.2007, all the accused persons filed a petition under Section 311 Cr.P.C. with a prayer to recall the P.Ws. for cross-examination. On 03.02.2007 the said prayer was allowed. On 05.03.2007, the complainant was cross-examined on recall by other accused persons except the petitioner as his advocate reached the court late and by then the complainant had left the court. On that day, advocate for the petitioner cross-examined P.Ws.2 and 3 and filed a petition to recall the complainant-opposite party. On 30.03.2007, the S.D.J.M. allowed the petition of the petitioner for recalling the complainant for further cross-examination subject to payment of Rs.2000/-. On 24.03.2007, the present petitioner filed a petition for extension of the date for deposit of the cost and the same was allowed. On 06.04.2007 and 10.04.2007 similar applications were filed and the same were also allowed. Ultimately, on 27.04.2007 the cost was deposited. On the same day, accused-petitioner also filed a petition to cross-examine the complainant on the additional questions set out in the petition. On 17.05.2007, after hearing the parties, the learned S.D.J.M. partly allowed the said petition confining the cross-examination to question no.6 and held that all other questions were irrelevant. On 25.05.2007, the complainant (P.W.1) was cross-examined by the accused-petitioner. The order dated 26.05.2007 reveals that the present accused-petitioner was absent. On the same day, the S.D.J.M. directed all the accused persons to be present on 06.06.2007 for accused statement. On that day, the Presiding Officer was absent and the date was refixed to 20th June, 2007 for accused statement. The order dated 26.06.2007 reveals that a petition was filed by the accused-petitioner to discharge him since no case was made out against the accused persons on the basis of the evidence produced by the prosecution and the case was posted to 02.07.2007 for objection and hearing on the above petition. The order dated 03.07.2007 reveals that after hearing the parties, the learned S.D.J.M.rejected the said application. The order dated 19.07.2007 reveals that the statement of all accused persons was recorded under Section 313

Cr.P.C. by the S.D.J.M. On 20th July, 2007, the accused-petitioner filed a petition praying for time for filing the list of witnesses. Thereafter, this revision was filed on 01.08.2007 challenging the order dated 17.05.2007. From a bare reading of the entire order-sheet, it reveals that the order dated 17.05.2007 has already been acted upon without any protest by the petitioner, since the petitioner re-examined the complainant on 25.05.2007 and on 19.07.2007 the accused statements were recorded. There is no dispute that a petition under Section 311 Cr.P.C. can be filed at any stage before delivery of the judgment in order to prevent failure of justice. But in view of the scenario narrated above, there can be no doubt that the aforesaid application was filed at a belated stage, that is to say, after closure of the complainant's evidence, without indicating the specific relevancy of further cross-examination. Further, the present revision petition has been filed before this Court after recording of the accused statements. It can, therefore, be inferred that the aforesaid application as well as the present revision has been filed to delay the trial of the case. Therefore, the learned S.D.J.M. was justified in disallowing the application.

6. Under these circumstances, this Court opines that it is not a fit case where interference can be made either under Section 397 Cr.P.C. or under Section 482 Cr.P.C. No material has also been brought before this Court to hold that any abuse of process has been committed, as alleged by the petitioner. The petitioner has no right to challenge the impugned order after participating in cross-examination, whereafter accused statement has been recorded. Even the petitioner's petition for time to supply the list of witnesses has also been allowed.

7. In view of the aforesaid, this Court is not inclined to interfere with the impugned order. Hence, the revision stands dismissed.

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**PRADIP MOHANTY, J.**

ORISSA HIGH COURT, CUTTACK,
October , 2007/***Samal***